A STUDY OF OPEN PRISON SYSTEM IN INDIA WITH SPECIAL REFERENCE TO STATE OF RAJASTHAN

A Synopsis in furtherance of partial fulfillment of Ph.D. Thesis submitted to Himachal Pradesh National Law University Shimla

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SYNOPSIS

1. Introduction

The Penal law of a country is set to prohibit the human conduct which harms the society and provides punishment in consonance with the harm inflicted upon the society.

For centuries, imprisonment is practiced as a measure to punish the offender. However, the ultimate aim of the imprisonment should be to bring the offender back to the society as a reformed and responsible citizen of the society. As Justice Anand Narain Mulla quotes in the All India Jail Reform Committee Report[1], " *So long as the imprisonment lasts, a convict is only under an eclipse and the moment this period expires, he has the right to come out of the clouds of ignominy and take his due place in sphere of life which he chooses like any other member of the community. A duty is therefore caste on the government to see that prisoner when he is released , is not materially handicapped in any way and should be able to walk straight to his place in the social structure after paying due price for his lapse*."

When an offender is put under imprisonment , it is like inflicting punishment on him for the second time. As Sir Andrew Patterson quotes, "The deterrent effect of the imprisonment lies primarily in the shame of being in prison and the fact of being in prison, with all that the fact in itself implies- complete loss of personal liberty, separation from home, family and friends, subjection to disciplinary control and forced labour, and depravation of most of the ordinary amenities and intercourse of everyday life. An offender is sent to prison as a punishment and not for punishment."[2]

With the development of modern penology, an increased emphasis is given to rehabilitative and thereaupatic approach which asserts on reforming the socio-psychological well being of an offender rather than eliminating him from the society by locking him under isolation state for years under the four walls of imprisonment. According to modern criminologists and penologists, the criminal is not seen as a culprit who wilfully commits crimes but as a "sick"

[1]Government of India, " Report of All India Committee on Jail Reforms (Mulla Committee" (Ministry of Home Affairs, 1983)
[2] *Ibid*

with a "diseased mind" who deserves mental, social and psychological treatment to return and reintegrate back to the society and lead a normal life with dignity.

Thus, Open Prisons emerged as an institution which would eliminate the tensions and barriers created by restrictions and physical restraints pleaded on inmates of a closed prison and bridge the gulf between traditional "closed prison" and "free community."

In 1952, the **Hague Conference** recommended the organization of **Open-Air Camps**. It stipulated that **those prisoners, who have spent satisfactorily a certain portion of the term of their sentence, should be transferred to open-air camps and allowed to lead a near-community life.** These work-based camps would have **a small inmate population** and **have bare minimum security arrangements. The First United Nations Conference on Prevention of Crime and Treatment of Offenders held in 1955 at Geneva recommended for the working of such " open-prisons" .'An open institution'**, according to the First UN Congress, 'is characterized by the absence of material and physical precautions against escape (such as walls, locks, bars, armed or other special security guards), and by a system based on self-discipline and the inmate's sense of responsibility towards the group in which he lives .[3]

Interestingly, in India, the concept of such prisons dates back much earlier- to the 18 the century. The 18th Century's prison administration used these prisons for employments, under guard, outside jail for construction of roads, cleaning of drains, digging of canals, laying of Railways. The basic idea was – to produce a deterrent effect by compelling a prisoner to carry out inhumane hard work in unhealthy conditions. Sitarganj, in Uttar Pradesh thus had the first Open Prison. In reality, it could not be called Open Prison because prisoners were kept away from township or village. The Sitarganj Open prison was established in a difficult terrain at the foothills of Himalayas, Nainital.[4] In 1836-38 , the All India Jail Committee condemned this practice and this disappeared in the Prison system till 1877. Further, the All India Jail Committee (1919-20) did not favor employment of convicts even for carrying out works of public utility.

In 1962-63 , the first Jail Committee was set up in Rajasthan. It submitted its Report in 1965. Thus, the concept of Open Prisons came in from the jail officials. Thus, Open Prisons happened

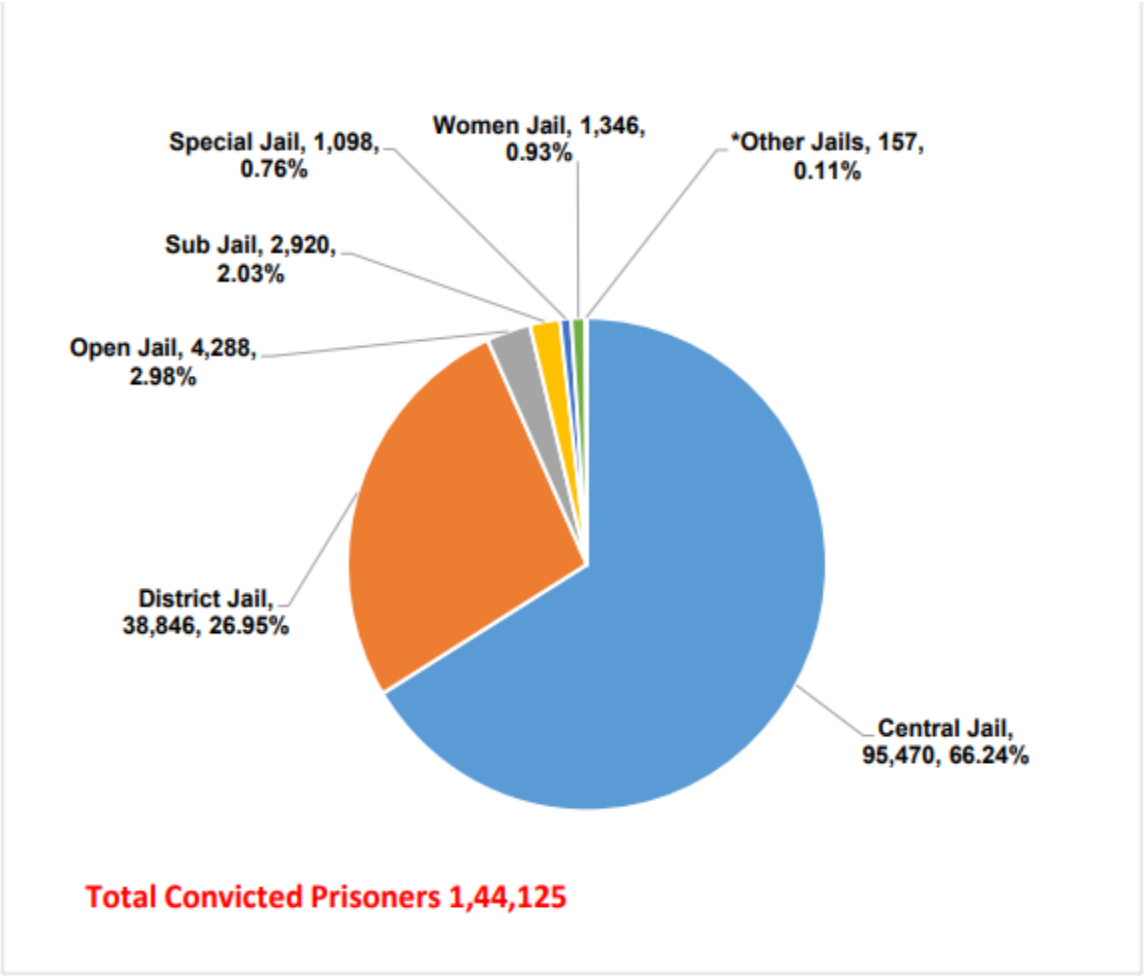
[3] Khushal Vibhute, "Open Peno Correctional Institutions of India: A Review of 55 years of Experiences and Expectations", Max Planck Institute For Foreign And International Criminal Law ,(2005).
[4] *Ibid*

not as a part of rules and regulations but as a practice which was later converted into Rules which were drafted in 1970-72.

Finally the first All India Jail Reforms Committee[5] recommended that prison reforms in India should be centre for correctional treatment, where major emphasis should be given on reduction and reformation of the offender. It thus recommended for setting up of Open Prisons- Penal institutions, characterized by the absence of material and physical precautions against escapes and insulated by the idea of self-help and self-discipline for effective rehabilitation of prisoners. The fundamental aim of Open Prisons was to bring attitudinal and behavioral changes in inmates, their social, moral and economic rehabilitation and restoring their "self-esteem"[6].The Criminal Bureau of Correctional Services opined that an Open prison should resemble the patterns of life and living in small Indian rural communities. However this institution has not gained much development and there has been no uniform legal framework in regulation of these institution despite being present for almost seven decades now.

[5] *Supra Note* 1 at page 2
[6] *Ibid*

According to NCRB Report 2019[7], presently only 17 states have Open prisons with approximately only 3% of the total prisoners lodged in these Open Prisons.


Special Jail, 1,098, 0.76%
Women Jail, 1,346, 0.93%
*Other Jails, 157, 0.11%
Sub Jail, 2,920, 2.03%
Open Jail, 4,288, 2.98%
District Jail, 38,846, 26.95%
Central Jail, 95,470, 66.24%
Total Convicted Prisoners 1,44,125

- As per data provided by States/UTs.
- Other Jails include Borstal Schools, etc.

Convicted Prisoners in Different Jails as on 31st December, 2019

Chart 2.2

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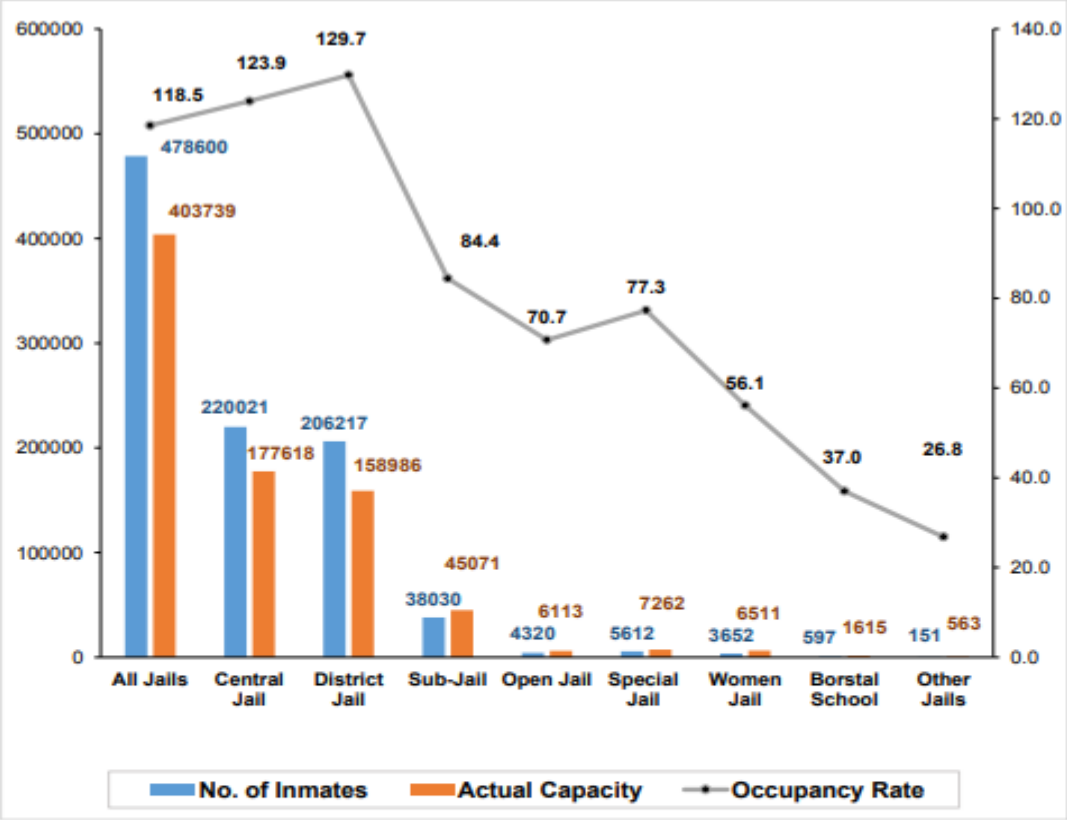
[7] National Crime Records Bureau , "Prison Statistics of India 2019" (Ministry of Home Affairs , 2019)
[8] *Ibid*

Despite the present staggering rate overcrowding in prisons



- As per data provided by States/UTs.

Occupancy Rate of Various types of Prisons at National Level as on 31st December, 2019

Chart – 1.5

the present occupancy rate in Open Prisons is only 70.67%. [9]

The growth of Open Prisons shows a very haphazard state. Open Prisons have developed better in some states than the others , the average prison population is a little over one percent in most of the states and a majority of the Open prisons provide only agriculture and allied work. Also

[9] National Crime Records Bureau , "Prison Statistics of India 2019" (Ministry of Home Affairs , 2019) , Chapter 1

in majority of the states, a prisoner has to first spend a long term in closed prison and above that qualify to a large number of conditions for being eligible to be transferred to the Open Prison , which ultimately leaves a very few prisoners eligible to be finally transferred to the Open Prisons. Majority of the states have the rule of not giving admission to women prisoners and under trials when the under trials are reported to be the highest, contributing to 70% of the total prison population according to NCRB Report 2019.

Table – 2.16

Category-wise Female Inmates in Different Jails as on 31st December, 2019

Sl. No.	Type	Convicts	% Share	Undertrials	% Share	Detenues	% Share	Others	% Share	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	CENTRAL JAIL	2893	44.0	3566	54.3	30	0.5	82	1.2	6571
2	DISTRICT JAIL	1741	20.8	6633	79.2	2	0.0	3	0.0	8379
3	SUB-JAIL	64	6.6	903	93.4	0	0.0	0	0.0	967
4	WOMEN JAIL	1346	36.9	2246	61.5	60	1.6	0	0.0	3652
5	BORSTAL SCHOOL	0	0.0	0	0.0	0	0.0	0	0.0	0
6	OPEN JAIL	121	97.6	3	2.4	0	0.0	0	0.0	124
7	SPECIAL JAIL	14	6.4	199	90.5	7	3.2	0	0.0	220
8	OTHERS	0	0.0	0	0.0	0	0.0	0	0.0	0
9	**TOTAL**	**6179**	**31.0**	**13550**	**68.0**	**99**	**0.5**	**85**	**0.4**	**19913**

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In the present study, I seek to examine the extremely negligent growth of Open Prisons in the last five decades and the undermining of an institution as a whole with utmost humanitarian

[10] National Crime Records Bureau , "Prison Statistics of India 2019" (Ministry of Home Affairs , 2019), Chart2.2

and rehabilitative approach being utterly neglected for no specific justification. Further, what steps can be taken to increase the growth of such Open Prisons in every state, establishment of Open Prisons for Women and the ways and means through which the concept of Open prisons can be spread as an accepted practice in bringing a revolutionary regime in the structural foundation of prisons without walls, bars and closed spaces.

2. Literature Review

The 1952 Hague Conference, for the first time globally recommended the organization of open air camps. It stipulated that those prisoners, who have spent satisfactorily a certain portion of the term of their sentence, should be transferred to open-air camps and allowed to lead a near-community life.

The UN Standard Minimum Rules for the Treatment of Prisoners (SMRs) were initially adopted by the **UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955. In 2015 the Standard Minimum Rules** were revised and adopted unanimously by the **UN General Assembly as "The Nelson Mandela Rules".**

In The **UN Standard Minimum Rules For Treatment Of Prisoners (Nelson Mandela Rules)** [11]**,** it talks about the universally accepted principles of good conduct and practice for treatment of prisoners and prison management.

Rule 87[12] lays down that before the completion of the sentence , it is desirable that necessary steps are taken to ensure that prisoners gradually return to life, depending on the case, it should not be entrusted to police but should be combined with effective social control.

Rule 89 [13] **specifically lays emphasis on setting up of Open Prisons** for providing individualized treatment and most favourable conditions for rehabilitation of prisoners.

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[11] UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules*), UNGAR 70/175(December 17, 2015)

[12] Nelson Mandela Rules, Rule 87 Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same prison or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

[13] Nelson Mandela Rules, Rule 89, Rule 89 1. The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups. It is therefore desirable that such

Rule 91[14] provides sentence should provide them with the sense of responsibility, it will encourage self respect and responsibility in them.

Rule 93 & 94[15] lays emphasis on the need of individualization by providing different treatment for different class of prisoners according to the individual needs, capacity and dispositions.

Rule 98 & 99[16] talks about the skills and vocational training that can help them earn a living after they are released.

India being a signatory of such document, these Standard Minimum Rules is to play a significant role in prison system and reforms in India.

The United Nations Minimum Standard Rules For Non- Custodial Measures (Tokyo Rules)[17] provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

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groups should be distributed in separate prisons suitable for the treatment of each group. 2. These prisons do not need to provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open prisons, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to the rehabilitation of carefully selected prisoners. 3. It is desirable that the number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed 500. In open prisons the population should be as small as possible. 4. On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

[14] Nelson Mandela Rules, Rule 91 The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility

[15]. Rule 93 1. The purposes of classification shall be: (a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence; (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation. 2. So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners. Rule 94 As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him or her in the light of the knowledge obtained about his or her individual needs, capacities and dispositions

[16] Nelson Mandela Rules , Rule 98 1. So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release. 2. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners. 3. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, prisoners shall be able to choose the type of work they wish to perform. Rule 99 1. The organization and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life. 2. The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the prison.

[17] UN General Assembly, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules*), UNGAR 45/110, (December 14th, 1990)

Rule 2[18] talks about the scope of non custodial measures and avoiding unnecessary use of imprisonment.

Rule 13[19] talks about the treatment process. It lays emphasis on the fact that specialized treatment for various categories of offenders should be conducted by professionals having suitable training and practical experience after understanding offenders' background, personality, attitude, intelligence, values and circumstances leading to the commission of offence.

Rule 17 & 18[20] lays emphasis on public participation and also encourages the use of co operation.

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[18] Tokyo Rules, Rule 2 2. The scope of non-custodial measures
2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.
2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of noncustodial measures, from pre-trial to post-sentencing dispositions. The number and types of noncustodial measures available should be determined in such a way so that consistent sentencing remains possible.
2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.
2.5 Consideration shall be given to dealing with offenders in the community avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.
2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.
2.7 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction

[19] Tokyo Rules , Rule 13 13. Treatment process
13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.
13.2 Treatment should be conducted by professionals who have suitable training and practical experience.
13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.
13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.
13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.
13.6 For each offender, a case record shall be established and maintained by the competent authority.

[20] Tokyo Rules , Rule 1717. Public participation
17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

In, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) , Rule 45[21] specifically talks about setting up of **Open Prisons for women** for reintegrating them with community and re-establishing their bonds with the families at the earliest.

In **UNODC Position Paper, Covid 19 preparedness and responses in prisons**[22], The vulnerability of prison and other detention settings to an explosive outbreak of COVID-19 must be of grave concern to all countries. In addition to their devastating effects on prisoners and those charged with their custody, such outbreaks would equally undermine ongoing control efforts in the community and place additional demands on already-stretched public health services. Prisons and other detention settings must therefore become an integral part of a national response to COVID-19. The confined settings that are inherent in detention and imprisonment must be limited to those individuals for whom there is no alternative, and meaningful support must be provided to people in contact with the criminal justice system during this unprecedented crisis. Concerted and urgent action involving prison administrations and all other relevant sectors of government and society is of the essence. Preventing outbreaks of COVID-19 in prisons, by taking affirmative steps to reduce prison populations, will be much easier than controlling outbreaks once they have occurred.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

Rule 18 . Public understanding and cooperation
18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote noncustodial measures.
18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.
18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.
18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

[21] Bangkok Rules : Rule 45 Prison authorities shall utilize options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage.
[22] United Nations Office on Drugs and Crime, *Position Paper Covid-19 Preparedness and Response in Prisons*(March,2020)

The 1st major Prison Reforms in India were introduced by the **Mulla Committee Report[23] .** The Report for the first time suggested for the development of Open Prisons across all states in India. In the **Nineteenth Chapter** , it talks about the setting up of Open Prisons.

The Committee suggested that Open institutions should be setup for at least 20 per cent of the total convicted prisoners who are sentence to one or more year, a chance should be given to improve themselves for better resocialization through community based correctional programmes. It further suggested that work in Open institutions should be diversified to suit prisoners of various socio-economic background. Since, most of the open prisons engage only in agricultural and allied work. Industries also may be set up at such institutions. Vocational training on a systematic basis should also be imparted to inmates of Open institutions. Semi-open facility to inmates confined in prisons 'day release system' should be introduced to allow suitable prisoners to work in government establishments and public undertakings during the day time.

In **Law Commission of India 156th Report[24]**, the Committee observed that as against the retributive, deterrent and preventive theory of punishment, the reformative approach should be given emphasis. It also talked about the community service as a source of punishment. It also recommended establishment of open air jail system to achieve the objective of rehabilitation and pre release of prisoners by giving them necessary training and opting correctional method. It also recognizes that with the view to rehabilitate offender they should be employed with work which shall prepare them for useful and remunerative employment after release.

The **National Policy on Prison Reforms and Correctional Admininistration**[25], prepared by BPR&D, also laid emphasis on setting up of Open Prisons under its key recommendations on Alternatives to Imprisonment. Part 3 of the Report deals with Modernization of Prisons and Alternatives to Imprisonment. On laying emphasis on Open Prisons, **it laid down Open Prisons restores the dignity of the individual and gives a sense of self-confidence and self reliance by instilling a sense of responsibility in the individual.** It also laid down the positive effects of open prison that it helps in reducing the damage to offenders and society, reduces the

[23] BPR&D, "All India Prison Reform Committee*"*, (1983)
[24] Law Commission of India, "156th Report on Indian Penal Code Vol.1*"*, (August, 1997)
[25] Bureau of Police Research and Department, **"**National Policy on Prison Reforms and Correctional Admininistration",*(*2007)

overcrowding in prisons, costs far less for the State to have people living in open prison than to pay for their upkeep in the jails and lastly that it inculcates a sense of social responsibility towards family and society.

The Report however laid down that the concept of open prisons needs to be given more publicity in our country to bring the focus of society to reformed offenders. It suggested that apart from agricultural based open prisons, there should be open prisons with an industrial / manufacturing base as well and it also suggested for setting up of Open Prisons for Women.

In a PIL, **Re-Inhuman Conditions in 1382 Prisons** [26], the Hon'ble Supreme Court directed to constitute a Committee to look into Model Rules for Open Prisons where the eligibility, following the reformation objective, state that, 'the criterion governing the selection process for admission to an open institution should be, not the particular penal or correctional category to which the prisoner belongs, nor the degree or nature of offence and length of his sentence, but his suitability for admission to an open institution and the fact that his social readjustment is more likely to be achieved by such a system than by treatment under other forms of detention.

The **Model Prison Manual 2016[27],** in its **Chapter XXIII,** recommends for setting up of Open Institutions. It suggests All Open and Semi-Open Institutions are intended to put in practice contemporary ideology of reformation, correction and rehabilitation of convicted prisoners so that they may lead a self-disciplined and cultural life after their release. These institutions provide prisoners opportunities of employment and living a life in the Open. This restores the dignity of individual and develops a sense of self-reliance, self- confidence and social responsibility, which are necessary for his/her rehabilitation in the society.

Of the key recommendations, The Manual suggests three kinds of institutions. State Government should frame detailed rules regarding the administration of Operational Work Camp, Open Training Institutions and Open Colonies .

1. **Open Work Camps** should be started in places where nation building activities, like digging canals, water channels, construction of dams, roads, government buildings and prison buildings, projects of land reclamation, land development and bringing uncultivated

[26] Re-Inhuman Conditions in 1382 Prisons, (Writ Petition (Civil) 406/2013)
[27]Government of India, " Model Prison Manual,(2016)" , Ministry of Home Affairs (2016)

land, should be situated in places where land and vocational training facilities available for inmates' training and after that for work in either collaboration of some industry/organisation/department or by Prison Department.

2. **Semi-Open Training Institutions :** Prisoners should be mainly employed in suitable industries, agricultural and allied work. Emphasis shall be laid on programmes like literacy project , social education, cultural and recreational activities.. Inmates will be gradually relaxed from conditions of closed prisons in the beginning to that of an open institution final stage .
3. **Open Colonies :** In Open Colonies, emphasis should be on work, literacy projects, social education, training in agriculture and allied fields and cultural activities.

In a **Study on open Prison of Rajasthan**[28],the researcher has studied different types of Open prisons in Rajasthan. She has also analyzed the unique operational model of all the open prisons an elaborated the parole practices in the state. The researcher found that in these open prisons of Rajasthan, the prisoner stays with their family and they earn a living to support them and are also allowed to go outside the prison during the day. The researcher found that living with the family provides the inmates with the sense of emotional and social support which helps them in earning a livelihood and re instil a sense of self worth in them. This movement also encourages free interaction and helps in breaking the social stigma attached.

The researcher has concluded that these open prison systems of Rajasthan fall among the best practices of the country. They are also 78 times cost effective than the closed prisons and also helps in social integration of prisoners reduction in the prison overcrowding and reduction in recidivism rate and most importantly provide a human system of rehabilitation.

According to **NCRB Report on Prison Statistics of India 2019**[29], the occupancy rate at the end of the year 2019 was as high as 118.5%. According to the Report, only 17 states have Open prisons with approximately only 3% of the total prisoners lodged in Open Prisons. Despite the present staggering rate overcrowding in prisons and the continuing reports of deterioration of jail conditions , the present occupancy rate in Open Prisons is only 70%.

[28] Rajasthan State Legal Services Authority, "The Open Prisons of Rajasthan: A detailed Study by Smita Chakraborty"(2017).
[29] National Crime Records Bureau , "Prison Statistics of India 2019", (Ministry of Home Affairs , 2019)

LIST–1.1

Sl. No.	Type	Number of Jails	Capacity	Population of Inmates	Occupancy Rate
(1)	(2)	(3)	(4)	(5)	(6)
1	CENTRAL JAIL	144	177618	220021	123.87
2	DISTRICT JAIL	410	158986	206217	129.71
3	SUB-JAIL	617	45071	38030	84.38
4	SPECIAL JAIL	41	7262	5612	77.28
5	OPEN JAIL	86	6113	4320	70.67
6	WOMEN JAIL	31	6511	3652	56.09
7	BORSTAL SCHOOL	19	1615	597	36.97
8	OTHERS	2	563	151	26.82
9	**TOTAL**	**1350**	**403739**	**478600**	**118.54**

• As per data provided by States/UTs.

Due to non-receipt of data from West Bengal for the year 2018 & 2019, data furnished for 2017 has been used.

Note: Figures as on 31st December 2019

In an article by Upendra Baxi , **Open Prisons, Closed Minds**[30]**,** he has put forth that how the concept of Open Prisons in India has not been seen as a matter of serious concern among the criminologists and penologists among the jail administrations in India. He says that despite the fact that extremely innovate steps were taken in regard to surrender of dacoits in Madhya Pradesh, Uttar Pradesh and Rajasthan Prisons in the sixties and seventies, it did not gain much progress in the later decades. He says that Open Prisons in India have been marked by haphazard progress. According to him, the prison administration have so highly been oriented with the policy of "containment" of prisons that the spectre of security constantly haunts them. He further says that Open Prisons have been reserved for a few categories of convicts only. He describe it by saying that majority for admission to Open Institution , a prisoner has to go through a number of eligibility conditions, leaving a very handful of convicts to be finally transferred to open convicts. He further says that there is no justification for the extremely low growth of open prisons in Independent India despite the rising rate of overcrowding in prisons, not only quantity but also quality of open prisons has also declined. He finally concludes that administrative and structural revival of open prisons cannot be done with closed minds.

[30] Upendra Baxi, "Open Prisons, Closed Minds", in Upendra Baxi, the Crisis of the Indian Legal System (Vikas, New Delhi, 1982).

In a 2019 Report by Institute for Criminal Policy Research, **Towards a health informed approach to penal reforms? Evidence from 10 countries[31] ,** the report aims to put forward the health risks which are associated with the over use of imprisonment and it also explains by addressing these issues should be a priority while framing the policy. In this report the author has examined the use of imprisonment in ten countries from all five continents namely

(i) Kenya and South Africa(Africa)
(ii) Brazil and US (Americas)
(iii) India and Thailand (Asia)
(iv) England and Wales, Hungary and Netherlands (Europe)
(v) Australia (Oceania)

In this report the author has demonstrated the limited value of criminal justice interventions in combating criminal conduct complex social, psychological, economical and other factors which underlie it.

The author has put forward the point that health problems are overly presented among those who are arrested, prosecuted, imprisoned and imprisonment further worsens health and hinders the process of rehabilitation and reoffending. The report does emphasize on proposing a health informed approach to the penal reforms. The report has three main chapters.

Chapter 2 lays emphasis on health problems of people who enter prisons. The prison population is drawn from the poorest and the most marginalized sections of the society whose mental and physical health are not in a good state. Also certain mental health condition can propel individuals into criminal justice system and ultimately into custody.

Chapter 3 lays emphasis on some of the ways in which imprisonment can further deteriorate the existing mental and physical health problems. It includes a discussion on the interlinked problems of poor material conditions, social and psychological crisis, violence, mistreatment among prisoner and staff, suicide and self harm.

Chapter 4 instigates the urgent need for addressing health related harms associated with the over use of imprisonment and emphasizes on the need of two pronged approach. Firstly, reducing the

[31] ICPR, "Towards a health informed approach to penal reforms? Evidence from 10 countries*"*, (June, 2019)

use of custody in general and specifically for mental health conditions. Secondly, improved health provisions with prisons.

In **Finnish Criminal Policy: From Hard Time To Gentle Justice**[32]**,** this paper has demonstrated the effects of liberal policies in Finland that have produced gentle justice and low recidivism rates. In this paper, it elaborates how Finland continues to seek ways to continue to improve their system, as is evidenced by the creation of supervised probationary freedom and the intention of reducing the number of closed prisons and replacing them with open prisons. In 1970s, **Finland had the most crowded prisons in Europe. Today, in little more than 30 years, it has halved the prison population and has become a role model.** The main ingredient in this recipe of success are the so-called Open prisons.

In, **Discipline and Punish**[33], French philosopher **Foucault** has presented a detailed analysis of the birth of prison and he has put forward the idea how prison has replaced all the correctional mechanisms that existed and how punishment became the penultimate icon of all the punitive mechanism. Its focus is on the early rising of the prisons as an institution in the 18th and 19th century when the punishment in the form of public display started disappearing and the notion of imprisonment within the four walls began to be favoured more.

In the opening chapter of the book Foucault offers a glimpse in the form of punishment which existed in Europe before incarceration came into picture. The corporal form of punishment which focussed more on inflicting pain in the public space acted as a key deterrence for people to commit crime. The two key purposes were solved through this method. The physical pain in form of torture of highest possible degree and public humiliation together played a huge role in erasing the criminal tendencies from the mind of the offender. Such kind of enforcement of law paved the way for concretising the legal supremacy. This generated a sense of fear among the common people from violating legal norms sanctioned by the sovereign of the state. This torture centred approach was replaced by the prison system in the 19th century. This transition from one form of punishment to another was not simple but a complex shift from the very notion of the punishment. The focal point of the punitive activity was shifted from soul to the body of the

[32] Ikponwosa O. Ekunwe and Richard S. Jones, "Finnish Criminal Policy : From Hard Time to Gentle Justice*"*, 21 Journal Of Prisoners On Prisons (June, 2012)
[33] Michel Foucault, *Discipline and Punish: The Birth of the Prison,* (Penguin Books, London,1977)

offender. Foucault says that there was a shift in the genealogy of the punishment. Punishment moved from a terrible visual experience into a u seen fear. These new mechanism of power resulted into a shift in the punishment where its effectiveness was the result not of its horrific spectacle but for the reason that punishment was inevitable.

Further he says that new technologist arrive into penal justice: Bureaucrats and psychiatrists. The bureaucrats include magistrates, educationalists, and prison personnel whose primary goal is to fragment the legal service to punish. The psychiatrists who in no way seem related to the legal structure are the most challenging entrants of all. Foucault talks about the concept of dangerous individuals. According to him the role of psychiatrists is to fix the danger being imposed by an individual in the social functioning. He says psychiatrists act as advisors on how punishable is an individual and to what degree his soul is corrigible. He says psychiatrist is not an expert in responsibility but and advisor on punishment. It is up to him to say whether the subject is "dangerous" , in what way one should be protected from him and how one should intervene to alter him, whether it would be better to try to force him into submission or to treat him.

The punishment thus becomes a matter of human sciences as much as is a legal discourse. The power to punish is justified by the newly emerged corpus of knowledge, techniques and scientific discourses. Foucault has approached the birth of prison from different angles, the basis of all of which remains the replacement of crime with the individual, the man or the soul.

Further he says that the entire socio juridical elaboration on the evolution of modern punitive system is centred on a body politic which becomes the arena of interaction of power relations and technologies of power . It means punishment is regarded as a complex social function and political tactic that derives from the process of epistemological juridical formation. The two major concepts that contributed to the development of "new" system work discipline and surveillance.

The success of disciplinary mode was vested in "Art of correct training" and the enactment of disciplining process needed to be continually snatched so its accuracy is ensured. The idea of surveillance makes its entry here. Foucault observes that the classical society had developed great inventions like the telescope for the shameful coercive observatories of mankind. The best example of this is found in the military camps. According to him discipline makes punishment

from central alignment of force of law into one of the two elements of "gratification: punishment".

In an **Independent Review of Sports in Youth and Adult Prisons**[34], the author has focussed on the role of sports in the criminal justice system. The author has focussed how sports as a tool can affect the health and rehabilitate them.

In this article the author has incorporated the stories of different profiles whose lives are transformed drastically with taking part in sports in prison. The author has put forth the idea that not only circumstances but also factors which lead them to commit crime must be addressed at the first place to reoffend the inmates. The idea being that the prison should be used as institution which helps in motivating the prisoners to change their behaviour and equips them with skill and positive attitude. The author has focussed on the idea that sports can play a huge role in criminal justice system to bring about a positive change in inmates and giving them a means to develop skills, learn life lessons and a window to explore their passion while improving the over all mental and physical health, reduced violence and tackle reoffending. In this paper the author has also highlighted examples of initiatives taken by certain individuals and organizations through good practices.

The author has thus conclusively reviewed the current state of sports in prisons and how sports can be used as an effective tool in preventing crime and recidivism rates.

In a **2019 Indian Justice Report by Tata Trusts**[35]**,** the report has specifically analyzed the various pillars of the justice system along the lines of their budgets, infrastructure, human resources, workload and diversity. The Report has made a significant contribution to the study of the justice system in India. It is comprehensive and brings to light several systemic faults and shortcomings, such as the abysmally low priority afforded to the justice machinery in state budgets, the persistence of an average 20 per cent vacancy across the various pillars in the justice system, and the lack of diversity within them. While emphasizing how the inefficiencies in the working of any institution in the justice system adversely affect the working of other institutions and eventually hinder access to, and the delivery of, justice itself, the Report provides us a

[34] Rosie Meek, "A Sporting Chance : Independent Review of Sports in Youth and Adult Prisons", (Ministry of Justice, England) (August 2018)
[35] Tata Trusts , "India Justice Report",(2019)

comparison of how extensive such problems are in various states across the length and breadth of the country. It maps the change in the functioning of state machinery across time, and highlights a critical roadblock in effectively understanding its working.

In **Psychological Effects of Incarceration on Inmates :Can we promote positive emotion in inmates?**[36], the author in this article has analyzed the psychological effect of incarceration. The author says that there is a great need to give psychological services to the incarcerated inmates. The author says that imprisonment can have several negative psychological effects on inmates leading to further deterioration. These includes emotional withdrawal, depression, suicidal thought or actions, increased level of hostility.

The author says that the very purpose of prison is to cure the criminals, however confinement behind the four walls of prisons do more harm than the good. The author suggests that policy makers should use positive interventions that can induce positive environment in the prison. The author has quoted the example of programs of Vermont Department of Corrections such as "Habits of mind" and "Challenging" choices which focuses on understanding and utilizing 16 aspects of behavioural intelligences and life skills that increases one's ability to solve problems effectively. The author has conclusively emphasized on the use of positive psychology and therapeutic techniques to equip the offenders to avoid criminal behaviour in future.

3. Statement of Problem:

Open Prisons are prisons without bars, lockups and walls. In India, the development of Open Prisons dates back to 1950s and proved to be a very efficacious system . Open Prisons are almost self-financed, self-governed and the cost of Open Prisons is much less than the closed prisons this system . According to a Report on Open Prisons of Rajasthan[37], closed prisons were found to be 78 times more expensive than Open Prisons and the Prisoner staff Ratio in closed prison was 6:1 while in open prisons was 80:1.[38]

[36] Shivani Tomar, "Psychological Effecs of Incarceration on Inmates: Can we Promote Positive Emotion in Inmates", 16 (1) *Delhi Psychiatry Journal* (April,2013)
[37] Rajasthan State Legal Services Authority, "The Open Prisons of Rajasthan: A detailed Study by Smita Chakraborty"(2017).
[38] National Crime Records Bureau , "Prison Statistics of India 2019" (Ministry of Home Affairs , 2019)

However this institution has not gained much developments and there has been no uniform legal framework in regulation of these institution despite being present for almost seven decades now. According to NCRB Report 2019[39], only 17 states have Open prisons with approximately only 3% of the total prisoners lodged in Open Prisons. Despite the present staggering rate overcrowding in prisons and the continuing reports of deterioration of jail conditions, the present occupancy rate in Open Prisons is only 70%. The growth of Open Prisons shows a very haphazard state. Open Prisons have developed in some states better than the others, the average prison population is a little over one percent in most of the states. Also in majority of the states a prisoner has to first spend a long term in closed prison and above that qualify to a large number of conditions for being eligible to be transferred to the Open Prison , which ultimately leaves very few prisoners eligible to be finally transferred to the Open Prisons.

The present study is carried out to understand and analyze the concept and relevance of Open Prison as a correctional institution in reforming and rehabilitating the prisoners. Further, to understand what are the various types of these institutions and what are the eligibility criteria adopted by different states for transferring the prisoners from Central and district jails to Open jails and the various correctional programmes undertaken by these institutions to reform and rehabilitate the prisoners . And lastly what steps can be taken to increase the growth of such Open Prisons in every state and the ways and means through which the concept of Open prisons can be spread as an accepted practice in our system with sufficient budget outlays for administration, medical, educational and after care services and a continuous social audit of progress and problems of the regime of open prisons.

4. Objectives

The study has been undertaken in view of the following main objectives:

i. To understand the concept, function and types of Open Prison Institutions.
ii. To look into the laws, rules, procedures governing the organization and functioning of the Open Prisons institutions.
iii. To examine the eligibility criteria and procedures adopted for transferring the prisoners from central or district jails to Open Jails.

[39] *Ibid*

iv. To understand and evaluate the educational, vocational and other correctional programmes in Open prisons.

v. To assess the impact of Open Prisons in bringing about reformation and rehabilitation of the inmates.

vi. To suggest measures to improvise and increase the growth of Open Prison institutions.

5. Research Questions

i. What are the different types of Open Prison institutions and what are the various correctional programmes undertaken by them?

ii. What are the laws, procedures and eligibility criteria adopted for admitting prisoners into Open Prisons?

iii. What is the impact of Open Prison in terms of its goal orientation as well as in reforming and rehabilitating the inmates?

iv. What are the loopholes in the existing system and what remedial measures may be adopted to improvise and increase the growth of Open Prison institutions?

6. Hypothesis

Open Prisons have adequate infrastructure and proper administration to provide opportunities to reform and rehabilitate the inmates.

7. Significance of the Study

Open Prisons have proven to be a successful practice in every state. These have proved to be much cheaper than the closed prisons. According to a Report on Open Prisons of Rajasthan[40], closed prisons were found to be 78 times more expensive than Open Prisons and the Prisoner staff Ratio in closed prison was 6:1 while in open prisons was 80:1 However , despite Open Prisons being present in India from last seven decades, they show a very scattered and negligent growth.

[40] Rajasthan State Legal Services Authority, "The Open Prisons of Rajasthan: A detailed Study by Smita Chakraborty" (2017).

Given the high rate of overcrowding, increased expenditure on infrastructure and the deteriorating status of closed prisons, Open Prisons can serve as an institution in reducing the existing burden on the closed prisons while bringing in a structural change in the regime of the idea of a prison as a correctional and rehabilitative institution.

8. Methodology

It would have been ideal to take up study in the whole of India but due to financial and time constraints, I have chosen my universe particularly to the state of Rajasthan. In the present study, doctrinal as well as non doctrinal research has been carried out to understand the functioning and operation models of different Open Prison institutions existing. The primary data is collected from formal sources like statistical data published by Government of India as well as well as from reports, legislations and data provided by the State Governments. For the empirical study , I intend to carry out a sample study of Open Prisons in Rajasthan and collect primary data using interview and Questionnaire method from the inmates and prison staff and officials connected with the functioning of the Open Prisons of Rajasthan.

9. Tentative Chapterization

The following is the tentative Chapterization that the researcher seeks to put forth :

- **Chapter -1 Introduction**

  This chapter will include a basic introduction of the concept of Open Prisons along with objectives, hypothesis, Statement of problem and Literature Review.

- **Chapter-2 Historical Development of Open Prison**

  This chapter will include the genesis of prisons in ancient India , the presence of Open Prisons pre-independence and it's development post independence.

- **Chapter -3 International Perspective on Open Prisons.**

  This chapter will include International Guidelines and Reports substantiating the relevance and effectiveness of Open Prison institutions and examples of such best practices and operation models of such institutions from around the world.

- **Chapter -4 Constitutional and Legislative Approach in India on Open Prisons.**
  This chapter will include the Constitutional and legislative approach for development, growth and promoting the idea of the Open Prisons in India.

- **Chapter-5 Judicial Approach in India on Open Prisons**
  This chapter will include the steps taken by judiciary for development, growth and promoting the idea of the Open Prisons in India.

- **Chapter -6 Status of Open Prisons in India**
  This chapter will include the laws, regulations, procedures and eligibility criteria adopted by Open Prisons of different states of India. It shall also include administrative setup , correctional, educational and vocational programs undertaken by various Open Prisons of different states.

- **Chapter -7 Open Prisons of Rajasthan : An Empirical Study**
  This chapter will cover the sample study of Open Prisons of Rajasthan. It shall include data and observation collected from inmates and prison officials connected with the Open Prisons of Rajasthan and an analysis of the functioning of the various Open Prison Camps and the correctional programmes carried out by them.

- **Chapter -8 Conclusion and Suggestions**
  This chapter will include the critical analysis of the existing Open Prisons and the ways and means through which such institutions can be promoted , diversified and improvised to serve its very purpose of rehabilitation and reformation .

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